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OLC 70-1493
OGC 70-1493

31 August 1970

1. The Defense authorization bill, H. R. 17123, now being debated on the Senate floor, contains provisions which are somewhat different from similar provisions in prior years' authorizations for the use of funds in Southeast Asia for military operations. The specific provisions in question are quoted below:

Free world forces language

SEC. 502. Subsection (a) of section 401 of Public Law 89-367, approved March 15, 1966 (80 Stat. 37), as amended, is hereby amended to read as follows:

"(a)(1) Not to exceed \$2,500,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine."

The Fulbright amendment would add the following to the above-quoted language:

"Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos."

OSD review(s) completed.

OGC Has Reviewed

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2. Free world forces language in the DOD authorization bill. In prior authorizations, support of Vietnamese and other free world forces was stated to be "in Vietnam." The wording of the current bill is "in support of Vietnamese forces." The report clearly indicates that this is merely a clarification so that there would be no doubt but that support for South Vietnamese or free world forces in the sanctuaries of Cambodia or protective reaction strikes across the border is clearly authorized. The report goes on to state there is no intent to permit the use of DOD appropriations under this authority to support Vietnamese and other free world forces in actions designed to provide military support and assistance to the Cambodian Government. It should be noted that these same points were made by Senator Stennis on the floor in reporting on and defending the authorization bill. It is further made clear that DOD funds can be used for the support of local forces only in Laos and Thailand and cannot be used to support Vietnamese or other free world forces in those countries.

25X6 3. In a long floor debate covering several days, but principally on 20 August 1970, Senator Fulbright argued persuasively that his amendment does no more than carry out the intent of the Armed Services Committee as stated in its report. Senator Fulbright pointed out that he was going one step further by applying the prohibitions to Laos as well as Cambodia. Senator Stennis attempted to have Laos removed from the Fulbright amendment by indicating that Laos was different from Cambodia in that we were already in Laos. Fulbright countered by pointing out that the amendment did nothing to what the U.S. was providing to the Laotians or the bombing of the Ho Chi Minh Trail but wanted to make it clear that South Vietnamese [redacted] forces would not use U.S. supplied money to move their troops into Laos.

25X1A 4. In discussions with Senator Goldwater, Fulbright stated the amendment would prevent the use of helicopters by the South Vietnamese in support of Laotian troops in the Plaines des Jarres. On the other hand, Fulbright agreed with Senator Goldwater that the amendment would not prevent South Vietnamese incursions on the border between Laos and South Vietnam. Fulbright conceded that the sanctuary concept was equally applicable to Cambodia and Laos. Fulbright also referred to the State Department announcement of the [redacted]

Fulbright states that [redacted]

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25X1A he interprets State Department's announcement "as meaning, in plain English, that we will foot the bill for whatever deal the

5. To give some flavor to the discussion, the following are direct quotes of Fulbright:

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"I am not bothering what we ourselves do. The amendment will not bother what we give to the Laotians. It is simply saying, 'Look, we do not want our so-called allies from Thailand and Vietnam to go up and get us further involved.'"

"I wish to compliment the Senator from Mississippi (Stennis) for his contribution and for making it very clear that he does not approve of expanding the war by proxy into U.S. support of the Cambodian-Laotian action."

To this last, Senator Stennis responded with:

"I have told the Senator from Arkansas (Fulbright) everything that is on my mind. I want to make it clear that I am a 'sanctuary man,' and the Senator from Arkansas agrees to that."

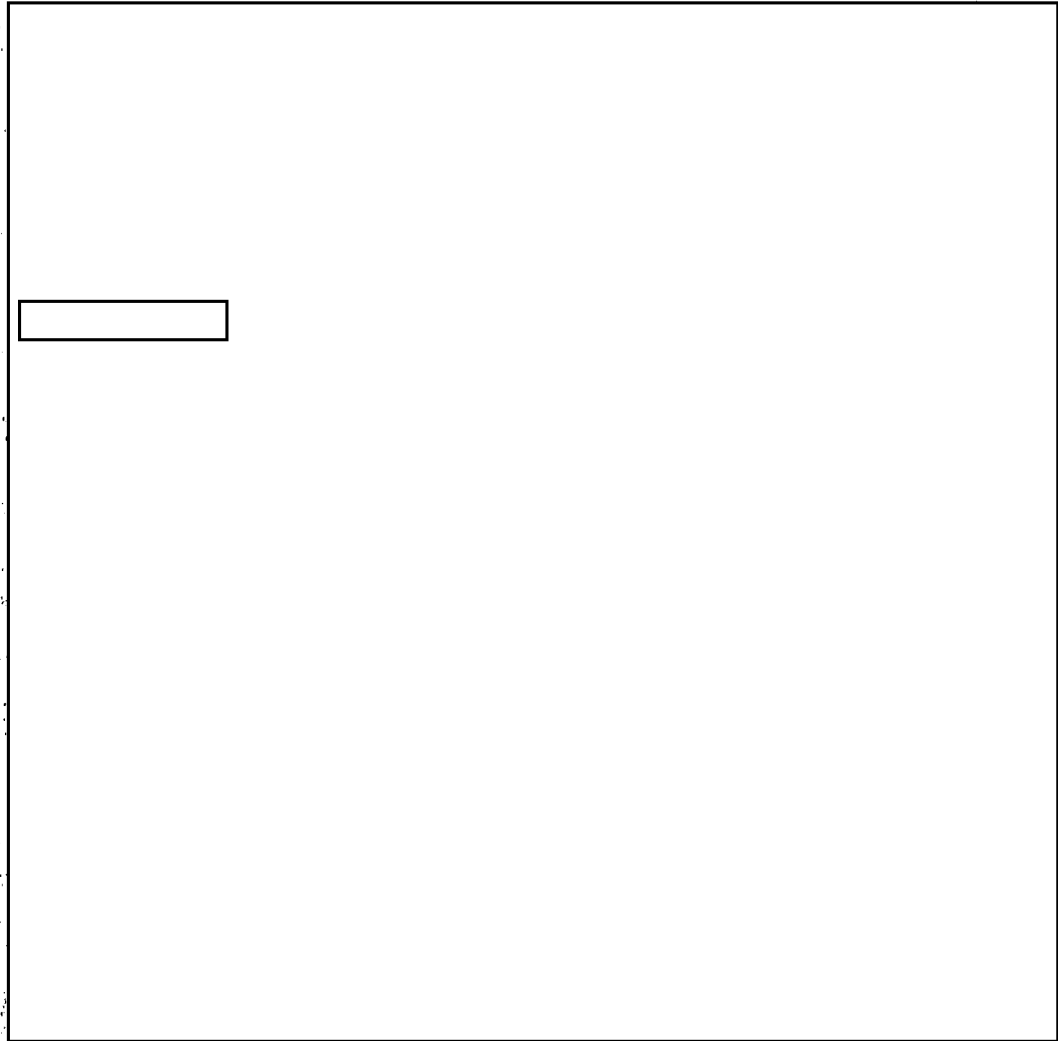
6. There was no real opposition to the Fulbright amendment and it was eventually passed by voice vote. So, what we have now is a situation where, in effect, the intent expressed in the Armed Services Committee report has been bolstered by a statutory prohibition. From the debate on the floor, there was no disagreement between Senators Stennis and Fulbright that the Fulbright amendment was merely a statutory expression of the intent of the Armed Services Committee. Despite technical changes in the language, DOD has no greater or no less authority with or without the Fulbright amendment and that authority is substantially the same as under existing law.

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7. It would be useful to examine four of the planned and existing projects in the area.

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b. SWITCHBACK II

+ The Khmer Krom now in Cambodia are being funded by DOD through CIA. Here Vietnamese nationals are being funded by DOD for actions in Cambodia. These troops, as I understand it, are now operating north of Phnom Penh. DOD has no specific authority to expend its funds for this purpose. The Fulbright

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amendment language explicitly prohibits it from
spending its funds for this purpose. [REDACTED]

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[REDACTED]

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[REDACTED]

d. 12 SGU Battalions

[REDACTED]

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8. It is reported in the NEW YORK TIMES of 24 August 1970, that Mr. Agnew expressed confidence that the House would not go along with the Fulbright amendment. The TIMES article states:

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"But even should the amendment become law, he said, 'There are many ways to bring about financial assistance to a friendly nation.' He implied that rather than subsidize the allied troops directly, the United States could perform a bookkeeping shift that would give some other form of 'financial relief' and enable the ally to pay for dispatch of the troops out of its own treasury."

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THE WASHINGTON POST, of the same date, says:

"I don't think," he (Agnew) said, "that necessarily troop financing is critical if alternative means of financial relief can be found for the country which would allow it to finance its own troops."

"To carry out the Nixon doctrine," Agnew replied to a follow-up question, "the President is going to find whatever means he has to make certain that the concept of the doctrine is met."

These could be regarded as clear indicators that transfers of funds would be involved in getting around the intent of the amendment. Looking at a democratically controlled Congress in early 1971 investigating programs in Cambodia and Laos, the charge could well be that the Administration was planning even before enactment of the authorization bill to subvert the will of Congress as expressed in law. It is difficult to see how the Agency could avoid being dragged into an investigation of such charges. Surely we cannot come out a winner.

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10. It would seem to make little difference whether a House-Senate conference drops the Fulbright amendment. Senator Stennis himself has agreed that it does not change DOD's authorities from those reported by the Armed Services Committee. What has happened is that there has been extensive discussion of the legislative intent so that the same dangers exist, the same charges can be made whether or not the Fulbright amendment survives. The chances of a probing of these programs in the next Congress are good and have been made more likely by the suspicions of Fulbright and others of secret deals by the Executive Branch, heightened by the Vice-President's statements.